HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLN. NO. 488 OF 2004.

Mrs. Waheeda Zaki Shaikh,
Age 26 yers, Occu: Housewife,
Residing at Flat No.6,
Second Floor, Laxmi Sadan,
Kurla Pipe Road,
Mumbai - 400 070. ..Appellant.

Versus.

Mr. Zaki Anwarallah Shaikh,
Age: 33 years, Occu: Service,
r/at 3, Ground Floor,
Laxmi Sadan, Kurla
Pipe Road, Mumbai - 400 070. ..Respondent.

Mr. I. A. Saiyed for the appellant - petitioner.

None for the respondents.

CORAM: S.B.MHASE &
S.R.SATHE JJ

DATE: JULY 06, 2005.

P.C.

1. This Criminal Revision Application is directed against the order passed by the Family Court, Bandra on 20th October 2004 in Petition No. E-190 of 2002 whereby the respondent husband is directed to pay Rs.1,000/- per month to the petitioner - wife as maintenance allowance under section 125 of the Code of Criminal Procedure from the date of the Petition, i.e. 13.5.2002. The husband is further directed to pay Rs.1,000/- as the cost of the

Petition. The wife being aggrieved with this order, has preferred this revision application, claiming maintenance at the enhanced rate.

2. So far as the points of neglect and refusal are concerned, we need not harp upon the same, because the present revision is directed against the quantum of maintenance amount granted by the trial court.

. The respondent though served remained absent. Even after admission of the matter also, the application was required to be adjourned from time to time and the respondent preferred to remain absent. Under these circumstances we are proceeding in this matter in the absence of the respondent.

3. The only point which is to be considered is about the quantum of maintenance. The trial court has assumed the income of the respondent to be Rs.8,000/- to 9,000/- per month. The trial court has considered that the mother and two unmarried sisters and the wife are dependent on the respondent husband and, therefore granted the maintenance at the rate of Rs.1,000/- per month only. However, basically what is the basis for coming to the finding that the income of the respondent is Rs.8,000/- to 9,000/- per month is not known. In fact the respondent

husband is in service and, therefore, the court should have insisted for the production of the Pay-Slip. The information about the income of the husband is within the knowledge of the respondent husband. Therefore, the respondent husband was equally under the obligation to produce the evidence in respect of his income. He also has preferred not to file any document. From the compilation tendered, it is pointed out to us that the Revision applicant - wife has sought summons to the Administrative Manager of M/s. Arrow Vision Pvt. Ltd, 10, Swati North Avenue, Santacruz (West), Mumbai 400 054. However, it is revealed that the said employer of the respondent- husband has refused to accept the summons. Therefore, effort of the Revision Applicant to get a direct evidence in respect of the income of the respondent has also failed. In fact such refusals are at the instance of the respondent - husband. Therefore, the further steps should have been taken to produce the witness. Now, the grievance of the learned counsel for the applicant is that the sisters who are shown to be dependent on the respondent - husband are not dependent. By way of an affidavit, it is brought on record that the sisters of the respondent, namely, Nuzat Siddique is working as a teacher at J.R.Municipal Urdu School, Immawada,Mumbai - 400 009 and second sister Azara Tayyaba is working as a teacher in Millat School, S.V.Road, Jogeshwari (West) Mumbai. If this affidavit is found to be

true, it will be revealed that these unmarried sisters are not dependent on the respondent - husband and the evidence tendered to that effect is incorrect statement. We are aware that the destitute wives are incapacitated because of the several facts to produce the evidence. However, that shall not deprive them of their right to get appropriate and proper maintenance from the husband. The husband being probably aware of the fact that, the order passed in his favour is suitable to him, has not bothered to contest this Revision Application. But looking to the facts and circumstances of the case, we find it appropriate to remand the matter only on the point of fixation of quantum of maintenance for the petitioner, after giving due opportunity to both sides. However, we direct that the summons and warrants, if necessary, shall be issued to employer of the respondent and the respective employers of the sisters of the respondent where they are working and thereafter the total income of the respondent shall be assessed by the court and after carrying out such assessment the quantum shall be fixed.

4. With these directions and observations, the matter is remanded back to the trial court. The order passed by the trial court granting maintenance at the rate of Rs.1,000/- per month is hereby set aside. However, we direct that till the final disposal of the Petition after

recording evidence, the respondent shall pay Rs.1,000/- per month by way of interim maintenance to the wife. The revision application is thus, partially allowed to the extent stated above. Trial court is directed to dispose of the matter within a period of four months from the date of receipt of writ from this court.

(S.R.SATHE,J.) **(S.B.MHASE, J.)**

:srp/2005/